IN THE HIGH COURT OF DELHI

Crl.M.C. No.914/2003

Sanjeev Nagpal & Ors. ..... Petitioners
! through: Mr. M.K.Arora, Advocate

VERSUS

$ State & Anr. ..... Respondents
^ through: Mr. D.S.Dalal, Adv. for complainant.
Mr. M.P.Singh, Adv. for the State.

RESERVED ON : 28.09.2007

% **D**ATE OF DECISION: 4.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

Crl. M.A. No. 11780/06

1. This is an application for restoration of Crl. M.C. 914/03.

2. Cause shown is sufficient. Crl. M.A. 11780/06 is allowed.

3. Crl. M.C. 914/03 is restored.

Crl. M.C. No. 914/03

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR No.16/2003 registered at P.S. Kirti Nagar under Sections 498-A/406/34 IPC

and the proceedings arising out of the said FIR.

2. Briefly stated, the facts are that the marriage between petitioner no.1, Sanjeev Nagpal and respondent no.2, Sonia Nagpal was solemnized on 19.8.96 as per Hindu rites and ceremonies. Unfortunately, the marriage turned sour and they started living separately since June, 2001. A boy named Shrey was born to the parties.

3. A complaint dated 7.1.2003 was filed by the respondent no.2 against the petitioner no.1, his father (petitioner no.2), mother (petitioner no.3), sister (petitioner no.5) and brother-in-law (petitioner no.4). The complaint contained the allegations of harassment for dowry, illegal retention of istridhan etc.

4. On the basis of the complaint FIR No.16/03 dated 9.1.2003 was registered.

5. Subsequently, parties entered into a written agreement dated 20.1.03 whereby they settled the disputes between them on the terms and conditions mentioned therein. Inter alia, it was agreed that a sum of Rs. 8 lakhs was to be paid by the petitioners to the respondent no.2 and that in consideration of same petitioner No.1 and respondent no.2 would obtain a decree of divorce by mutual consent and shall also seek quashing of aforesaid FIR.

6. Copy of the agreement dated 20.1.2003 is on record. Correctness of the same is not disputed. It reads as under:-

"AGREEMENT/COMPROMISE

This Deed of Agreement is made on 20th day of January 2003, between Mrs. Sonia Nagpal W/o Sh. Sanjeev Nagpal at present residing at 7/126, Ramesh Nagar, New Delhi on the first part.

AND

Sh. Om Prakash Nagpal S/o Late Jeevan Das R/o 17 B/D, Gandhi Nagar, Jammu, India. (The real brother of the father-in-law of the first party) acting on behalf of Sh. Ram Saroop Das S/o Late Jeevan Das.

That a marriage took place between the first party and Sh. Sanjeev Nagpal S/0 Sh. Ram Saroop, on 19.8.96

and a boy named Master Shrey, was born out of the said wedlock. But due to the differences in temperament of both the husband and wife, the marriage could not stood long and ultimately, a FIR No. 16/2003, P.S. Kirti Nagar, U/s 498-A/406/34 IPC against the husband and his family.

That due to the intervention of the respectables from both the family, the dispute has been settled, and by this agreement the complainant (first party) has agreed to settle the dispute by taking 8,00,000/- rupees (Rupees Eight Lacs only) from Sh. Om Parkash on behalf of the accused party, as a total amount in lump-sum, more specifically, this amount consisting of the entire istridhan, Alumony, her future maintenance etc.

That out of the above said amount rupees four lacs (4,00,000/-) would be paid to her at the time of granting the bail to the accused party and rest of the amount of four lacs (4,00,000/-) would be paid to the first party at the time of divorce by mutual consent, and quashing the FIR No. 16/2003, P.S. Kirti Nagar, U/s 498-A/406/34 IPC by the first party (Ms. Sonia Nagpal)

That the baby boy master Shrey would be with his father, Sh. Sanjeev Nagpal on his sole responsibility, however the mother Smt. Sonial Nagpal would be allowed to meet the child as and when she desires.

Both the party have at set their hands before the

following witnesses:-

WITNESSES: FIRST PARTY

Sd/- SECOND PARTY"

7. In pursuance of afore-noted agreement, a sum of Rs.4 lakhs was paid to respondent no.2-wife at the time when the learned Additional Sessions Judge granted the bail to the petitioners.

8. As evident from the agreement, balance amount of Rs.4 lakhs was to be paid in two installments of Rs.2 lakhs each. First installment of Rs.2 lakhs was to be paid at the time when the decree of divorce by mutual consent was obtained by the parties. Second installment of Rs.2 lakhs was to be paid at the time when FIR would have got quashed.

9. However, parties could not agree about the format of joint petition which was to be filed under Section 13(B)(1) of the Hindu Marriage Act, 1955 for a decree of divorce by mutual consent. Petitioner no.1 alleges that he prepared draft joint petition but that the respondent no.2 did not co-operate with him and unilaterally filed a petition for divorce.

10. Petitioner no.1 submitted that since he also wanted a divorce notwithstanding various allegations against him contained in the divorce petition filed unilaterally by the wife

and since object of separation was being achieved he did not appear in said proceedings. The court thus granted an ex-parte decree to the respondent no.2.

11. The grievance of the petitioners is that they are ready and willing to perform their obligations under the afore-noted written agreement but respondent no.2-wife is resiling from the said agreement and is not co-operating with them.

12. The question is whether in these circumstances, the FIR as also the proceedings arising out of the said FIR should be quashed or not.

13. In the decision reported as *Ruchi Agarwal v Amit Kumar Agarwal & Ors.* (2005) 3 SCC 299 a complaint was lodged by the appellant-wife alleging offences under Sections 498-A, 323 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act. Thereafter, a divorce petition was filed by her. In the said divorce petition, a compromise was arrived between the parties in which it was stated that the first respondent-husband was willing for a consent divorce and that the appellant-wife had received all her maintenance and istridhan in lump sum. It was also stated in the said compromise deed that the parties to the proceedings would withdraw all civil and criminal complaints filed against each other. Notwithstanding the compromise, the

appellant-wife did not take any steps to withdraw the said complaint. Noting that the appellant-wife had signed the compromise deed and the first respondent-husband performed his part of obligation under the compromise deed, the Supreme Court quashed the complaint and observed as under :-

> "Learned counsel appearing for the appellant, however contended, that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted and thus had performed his part of obligation under the compromise deed. Even the appellant partially performed her part of obligations by withdrawing her criminal complaint filed under Section 125. It is true that she made a complaint to the Family Court where Section 125 Cr. P.C. proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.
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> In view of the said subsequent events and the conduct of the appellant, it would be an abuse of process of the court if the criminal proceedings from

> which this appeal arises is allowed to continue. Therefore, we are of the considered opinion that to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.224/2003 registered in police station, Bilaspur, (Distt. Rampur) filed under Sections 498-A, 323 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. Appeal is disposed of."

14. In the decision reported as *Mohd. Shamim v Nahid Begum* 2005 (1) JCC 83, first respondent-wife filed a complaint under Sections 498-A/406/34 IPC against the appellants. During the pendency of the complaint, a settlement was arrived at by the parties. An affidavit in support of the said settlement was filed by the first respondent-wife. The said settlement was duly recorded in a judicial order. Pursuant to the said settlement, appellants filed a petition under Section 482 of the Cr. P.C., 1973 before the High Court for quashing the FIR. First respondent-wife filed an objection to the said petition. In view of stand taken by the first respondent, the High Court declined to quash the FIR. Noting that the first respondent had entered into a settlement and had also received money in pursuance of said settlement, the Supreme Court in appeal reversed the decision of the High Court and quashed the FIR. In the said decision, the Supreme Court had observed as under:-

> "In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending

> against the Appellants, in our opinion, in this case also, would be an abuse of process of the court. The Respondent No.1, however, would be entitled to withdraw the sum of Rs.50,000/- deposited in the court. We therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent."

15. In the decision reported as *Kamlesh Varma & Ors v NCT of Delhi & Ors* 2002 (2) CCC (Del) 74 on the basis of the complaint lodged by the respondent no.2-wife, a FIR under Sections 498-A/406 IPC was registered against the petitioners. Husband of the complainant also filed a petition for divorce which was decreed in his favour. Against the said decree, Respondent no.2-wife filed an appeal in the Punjab and Haryana High Court. During the pendency of the said appeal, an compromise was arrived at between the parties and in terms of compromise husband paid a sum of Rs.2,25,000/- to the respondent no.2-wife. The respondent no.2-wife categorically undertook to withdraw the aforementioned complaint filed by her. In pursuance of the compromise, a quashing petition was filed before the High Court. The respondent no.2-wife however refused to co-operate with the petitioners in the said quashing on the ground that the sum of Rs.2,25,000/- was paid only towards her claim for maintenance. Noting the compromise which was arrived at before the Punjab and Haryana High

Court, the learned Single Judge of this court quashed the afore-mentioned FIR. In the said decision, it was observed as under:-

> "4. It is not in dispute that respondent No. 2/complainant was working in the railway at the relevant time. In view of the same, I am unable to accept the argument that the complainant accepted Rs. 2,25,000/- only towards her maintenance. Articles of Istridhan were recovered by the police during investigation on 20th January, 1993 and 13th February, 1993. The respondent is resting her claim for the un-recovered jewellery on the list given on 11th February, 1993 during the investigations to the police. This claim was very much within her knowledge on the date she accepted Rs. 2,25,000/- before Division Bench in High Court on 25th March, 1996 when she specifically undertook to withdraw/settle criminal case pending in the Matrimonial Court, Shahdra. If that was so, respondent No. 2 ought to have not agreed or ought to have sought clarification from the High Court. That having not been done, now it does not lie in her mouth and argued that she never agreed to get the criminal proceeding quashed. This contention is without merit and the same is rejected.
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> 5. In the facts and circumstances noticed above, the continuation of the criminal proceedings would be an abuse of the process of the court and the same are liable to be quashed in terms of same law laid down by the Supreme Court in State of Haryana v. Bhajan Lal, AIR 1992 SC 604 and several subsequent judgments."

16. In the decision reported as *Satish Gathwal & Ors v State & Anr* 1982 (2) JCC 114 on the basis of the complaint lodged by the respondent no.2-wife, a FIR under Sections 498-A/406 IPC

was registered against the petitioners. During pendency of the criminal proceedings pertaining to the afore-mentioned FIR, a written agreement was entered into between the parties whereby they agreed to settle the disputes between them on the terms and conditions mentioned therein. In pursuance of said agreement, a sum of Rs.5 lakhs was received by the respondent no.2-wife. A joint petition for quashing of FIR was filed before the High Court. During the hearing of the quashing petition, respondent no.2-wife made a statement before the court affirming the terms of the agreement. However, later she refused to participate in the quashing petition on the ground that the amount mentioned in the agreement was paid towards her claim for maintenance, stridhan and dowry articles and that agreement had nothing to do with criminal proceedings pending trial. Noting the written agreement entered into between the parties and statement of respondent no.2-wife before the Court wherein she affirmed the terms of agreement, the learned Single Judge of this court quashed the FIR in question. In the said decision, it was observed as under :-

> "17. Her statement was a representation made and undertaking given before this Court that she will not pursue her complaint and on the basis of this, the petitioner has given and she has accepted Rs. 6.00 lakhs in part satisfaction of the agreement. This is very unfortunate that she is now backing out from

> this undertaking. She is estopped in law from withdrawing her undertaking and representation. This would amount to committing Contempt of Court by her. From the agreement entered into between the parties and which is confirmed by them in Court, no doubt is left that this was a package deal for divorce as well as for quashing the criminal proceedings. By denying this agreement, she is certainly misusing the process of the Court. The Court would not allow a party to misuse its process."

17. Lastly, I note the following observations of the Supreme Court in the decision reported as *State of Karnataka v L.Muniswamy & Ors* AIR 1977 SC 1489 :-

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature....."

18. In the light of the afore-noted judicial pronouncements and noting the fact that the respondent no.2 had entered into a written agreement dated 20.1.2003 and that she took Rs.4

lakhs in pursuance of said agreement, I consider it appropriate to quash the aforesaid FIR and proceedings arising out of the said FIR.

19. Petitioners are hereby directed to deposit a sum of Rs. 4 lacs in the Registry of this court within a week from today.

20. On compliance of the aforesaid direction by the petitioners, the FIR No.16/2003 registered at P.S. Kirti Nagar under Sections 498-A/406/34 IPC would be deemed to be quashed.

21. Liberty is granted to the respondent no.2-wife to withdraw the said sum of Rs.4 lacs.

22. Crl.M.C. No.914/03 is accordingly allowed.

23. No costs.

October 4, 2007 PRADEEP NANDRAJOG, J.